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Legal Costs to Obtain Support Amounts

Paragraph 17 of Interpretation Bulletin IT-99R5 (Consolidated), *Legal and Accounting Fees*, provides that legal costs incurred in establishing the right to spousal support amounts, such as the costs of obtaining a divorce, a support order for spousal support under the *Divorce Act* or a separation agreement, are not deductible as these costs are on account of capital or are personal or living expenses. This position is based on the decision of the Federal Court-Trial Division in the case of *The Queen v. Burgess*, [1981] CTC 258, 81 DTC 5192. The last sentence of paragraph 17 of the interpretation bulletin also provides that legal costs of seeking to obtain an increase in spousal or child support, or to make child support non-taxable under the *Federal Child Support Guidelines* (the "Guidelines"), are non-deductible.

Following the decision in the case of *Gallien v. The Queen*, [2001] 2 CTC 2676, 2000 DTC 2514 (T.C.C. – Informal Procedure), the Canada Customs and Revenue Agency (CCRA) has reconsidered the above positions. As a result, we now consider legal costs incurred to obtain spousal support under the *Divorce Act*, or under the applicable provincial legislation in a separation agreement, to have been incurred to enforce a pre-existing right to support. Consequently, these costs are deductible pursuant to the comments in paragraph 18 of Interpretation Bulletin IT-99R5 (Consolidated). We also now accept that legal costs of seeking to obtain an increase in support or to make child support non-taxable under the Guidelines are also deductible.

This change in position will be effective for future assessments and reassessments and will not apply retroactively (unless a notice of objection was filed and is still outstanding, or can still be filed).

Cancellation of Interpretation Bulletins

The following Interpretation Bulletins are cancelled and they will be annotated as such in the next review of the *Index to Income Tax Interpretation Bulletins and Technical News*.

IT-68R2, *Exemption from Income Tax in Canada – Professors and Teachers from Other Countries*, dated March 23, 1989, is cancelled as it is no longer relevant. The tax conventions that contained this exemption have been renegotiated and no longer provide this exemption nor is it expected to be provided in those that are under renegotiation.

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Canada

IT-163R2, *Election by Non-Resident Individuals on Certain Canadian Source Income*, dated September 19, 1985, is cancelled as a result of significant past legislative changes to section 217 of the *Income Tax Act*.

IT-172R, *Capital Cost Allowance – Taxation Year of Individuals*, dated August 25, 1980, and the **Special Release** to it, dated June 13, 1986 are cancelled because the information they contained is no longer relevant. The information on the subject that IT-172R covered has been updated since the Special Release had been issued and is now available in the guides entitled *Reconciliation of Business Income for Tax Purposes* (RC4015) and *Preparing Returns for Deceased Persons* (T4011) as well as in the current version of Interpretation Bulletins IT-285, *Capital Cost Allowance – General Comments*, and IT-478, *Capital Cost Allowance – Recapture and Terminal Loss*.

The **Special Release to IT-193**, *Taxable Income of Individuals Resident in Canada during Part of a Year*, dated September 30, 1985, is cancelled due to the fact that section 114 of the *Income Tax Act* has gone through substantial revisions. Most of the comments in the bulletin are out of date and no longer applicable. IT-193 has been cancelled by ITD-2 on May 17, 1991.

IT-358, *Partnerships – Deferment of Fiscal Year-End*, dated December 20, 1976, is cancelled due to the fact that subsection 99(2) of the *Income Tax Act* had become largely inapplicable following legislative modifications from the 1995 Budget (S.C. 1996, c. 21). The relevant general information IT-358 contained can be found in the current version of IT-179, *Change of Fiscal Period*.

Correction to the French Version of IT-519R2 (Consolidated)

In paragraph 71a) of the French version of IT-519R2 (Consolidated), *Medical Expense and Disability Tax Credit and Attendant Care Expense Deduction*, the expression "une déficience physique grave et prolongée" is replaced by the expression "un handicap moteur grave et prolongé". The electronic French version will be amended accordingly.